

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 16**

Houston, Texas

MIKE CALVERT TOYOTA, INC.

Employer

and

Case No. 16-RC-10447

INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE
WORKERS, SOUTH TEXAS DISTRICT,
LODGE 37

Petitioner

**REGIONAL DIRECTOR'S DECISION AND
DIRECTION OF ELECTION**

The Employer, Mike Calvert Toyota, Inc., operates automobile dealerships in Houston, Texas, where it employs approximately sixty-one automotive technicians. The Petitioner, International Association of Machinists and Aerospace Workers, South Texas District, Lodge 37, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of all of the Employer's automobile technicians. The parties have no prior bargaining history. A hearing officer of the Board held a hearing and the parties filed briefs with me. The Unit sought by the Petitioner includes all service technicians including service technician trainees, lube technicians, used car technicians, and pre-delivery inspection technicians employed by Mike Calvert Toyota, Inc. The Employer argues the unit should include all service technicians including service technician trainees, lube technicians, used car technicians, and pre-delivery inspection technicians employed by Mike Calvert Toyota, Inc., herein Calvert Toyota, and Davis Chevrolet, Inc., herein Davis Chevrolet. In addition, the Employer seeks to include the Davis Chevrolet shop foreman and all body shop technicians.

The three issues involved in this case are: (1) whether the petitioned for unit consisting of all service technicians, including service technician trainees, lube technicians, used car technicians, and pre-delivery inspection technicians employed by Calvert Toyota constitutes an appropriate unit; (2) whether employees of Davis Chevrolet, including all service technicians, service technician trainees, lube technicians, used car technicians, pre-delivery inspection technicians and shop foreman share such a community of interest with the employees in the petitioned for unit as to warrant their inclusion in the unit and (3) whether the body shop technicians share such a community of interest as to mandate their inclusion in the petitioned for unit. I find the appropriate unit should be comprised of employees of Calvert Toyota only. The factual basis and analysis for these findings follow below.

OVERVIEW OF EMPLOYER'S OPERATIONS

The Employer is an automobile dealer engaged in the retail sale and service of new and used automobiles. The Employer maintains two facilities in Houston, Texas which are the subject of this proceeding: Calvert Toyota and Davis Chevrolet.

Mike Calvert, Jay Davis and John Gnemi are the common owners of both Calvert Toyota and Davis Chevrolet. Gnemi also serves as the general manager for both dealerships and maintains an office at each facility. Calvert Toyota and Davis Chevrolet also share a common Director of Special Finance (Jeff Goldberg), Customer Relations Manager (Sandy Brune), Used Car Buyer (Jim Lawlis) and Trainer (Owen Rachal).

Calvert Toyota is located at 2333 S. Loop 610 West at Kirby Drive and Davis Chevrolet is located across the street at 2277 S. Loop 610 West at Kirby Drive. Each dealership houses its inventory on storage lots located at its facility. Each dealership also maintains a separate service department where service technicians perform mechanical work on vehicles. The Employer maintains a collision center or body shop which services both Calvert Toyota and Davis Chevrolet. The body shop building is identified as "Body Shop" and "Collision Center Toyota/Chevrolet" and is located behind the Calvert Toyota service department.

The Employer employs approximately sixty-one technicians including approximately thirty at Calvert Toyota, seventeen at Davis Chevrolet and fourteen at the body shop. In addition, the Employer maintains a "make-ready" department that cleans cars, details used cars and tints windows for both Calvert Toyota and Davis Chevrolet. The individuals performing these functions are subcontractors and are housed in a separate building on the Toyota lot. At the hearing, the parties stipulated, and I find, that these individuals are not employees within the meaning of the Act. Accordingly, I will exclude these individuals from the unit.

Calvert Toyota and Davis Chevrolet jointly sponsor community affairs and jointly advertise in the Houston Chronicle.

SERVICE DEPARTMENTS

Calvert Toyota and Davis Chevrolet employ separate Service Managers. Jim Greenleaf is the Service Manager at Davis Chevrolet. Roy Henderson is the Service Manager at Calvert Toyota. The parties stipulated, and I find, that the service managers are supervisors within the meaning of the Act because they possess the authority to hire, fire and discipline and effectively recommend such actions and, therefore, should be excluded from the appropriate unit.

The service departments are organized by teams consisting of Assistant Service Managers (also known as service writers or ASM), a team leader and service technicians. The Service Manager reports directly to the General Manager. The Assistant Service Managers report directly to the Service Manager. The team leaders report directly to the Assistant Service Manager. The Assistant Service Manager and Service Managers do not supervise service technicians outside of their respective dealership. The parties stipulated, and I find, that the

Assistant Service Managers or service writers are supervisors within the meaning of the Act because they have authority to hire, fire and discipline and have effectively exercised such action and, therefore, should be excluded from the unit. The parties further stipulated, and I find, that team leaders are not supervisors within the meaning of the Act because they do not have the authority to hire, fire, discipline or effectively recommend such action and are appropriately included in the unit.

The service process at both Calvert Toyota and Davis Chevrolet is initiated by a customer making an appointment with a service advisor, either in person or online. A service advisor greets the customer, inspects the vehicle and generates a repair order. After the repair order is generated, the service advisor designates a service technician to work on the vehicle and sends the vehicle back to the service shop. The service advisor then discusses the repair order with the service technician; the car is tagged and placed on the lot. Next, the service technician drives the vehicle into the repair shop and if needed, clarifies the order with the service advisor. After determining what needs to be done, the service technician visits the parts department and reviews the parts, prices and options with the parts employee. The service technician takes the repair order to the service advisor who works up an estimate and calls the customer to “sell” the job. The service advisor may also speak with a warranty administrator to determine if any parts or labor are covered under warranty. After the customer approves the repair, the service advisor returns the repair order to the service technician who secures the needed parts from the parts department. After the work is completed, the service technician submits a report to the service advisor. Finally, the customer picks up the vehicle.

The record revealed that the Toyota service technicians repair only Toyota vehicles and that Chevrolet service technicians repair only Chevrolet vehicles. Although the Employer has permanently transferred some employees between the two dealerships, no service department employees have transferred from Calvert Toyota to Davis Chevrolet or vice versa. Further, Calvert Toyota technicians wear Toyota uniforms while Davis Chevrolet technicians wear Chevrolet uniforms.

The record revealed that due to differences and manufacturer limitations, Calvert Toyota service technicians and Davis Chevrolet service technicians are not cross-trained. Each dealership is responsible for training its service technicians individually. Further, while the service technicians from both dealerships perform similar mechanical work requiring similar skills and similar tools, each maintains similar but separate repair orders. The repair orders are titled either Calvert Toyota or Davis Chevrolet and each reflects the work needed and the hours required to complete the job. In addition, Calvert Toyota and Davis Chevrolet have separate parts departments.

The record revealed that the service technicians from both dealerships are paid at a fixed hourly rate that was estimated to range between \$16 to \$18 per flat hour. Similarly, the service technicians from both dealerships enjoy the same fringe benefits—vacation leave, holidays, health insurance plan and 401(k) retirement plan.

DAVIS CHEVROLET SHOP FOREMAN & OTHER CLASSIFICATIONS

The shop foreman at Davis Chevrolet is Allen Moore. As the shop foreman, Moore reports directly to the Davis Chevrolet service manager, Jim Greenleaf. Moore's duties include diagnosing and test driving cars, assisting mechanics with problems, meeting with customers on intermittent problems, riding with customers and reviewing problems with the mechanics. Approximately two or three times a week, Moore performs actual car repairs himself. The record revealed that Moore does not have the authority to hire, fire, and discipline or effectively recommend such action. Moore does not have the authority to grant time off and does not direct work to the technicians. The dispatcher directs work assignments.

With regard to other classifications, the parties stipulated, and I find, that window tinters should not be included in the appropriate unit. As such, the two individuals on the pre-delivery inspection employee list, Daniel Trevino and Michael High, who perform window tinting are excluded from the appropriate unit.

THE BODY SHOP

The body shop service process is initiated by a customer making an appointment with a body shop estimator who generates the repair order. The body shop then follows the same general repair procedures as the service departments at Calvert Toyota and Davis Chevrolet.

Similar to the service departments, the body shop is composed of a team consisting of technicians, estimator and service manager. The body shop technicians report to a body shop estimator who reports to Body Shop Service Manager Tony Bock. The Body Shop Service Manager reports to General Manager John Gnemi. Bock wears a Calvert Toyota shirt to work and is on the payroll for Calvert Toyota. The parties stipulated, and I find, that the Body Shop Service Manager, like the service department service managers, is a supervisor within the meaning of the Act because he possess the authority to hire, fire and discipline and effectively recommend such actions and, therefore, should be excluded from the appropriate unit.

The record revealed no evidence of transfers between of the body shop and the service departments of either Calvert Toyota or Davis Chevrolet. With the exception of the General Manager, who manages both dealerships and the body shop, the body shop technicians are exclusively supervised by a body shop manager.

The record revealed that the body shop technicians and service technicians do not generally work side-by-side with each other. When a vehicle is brought in to the service department, the assigned service technician normally completes any needed mechanical repair. However, if the car requires body work, it may be sent to the body shop. The record revealed that the body shop technicians occasionally perform overlapping mechanical work such as replacing air bags, headlight assemblies, and air conditioner condensers and repairing electric windows. The Employer contends that body shop technicians perform mechanical work twenty to thirty percent of the time. The body shop and service departments share some machines, in

particular a wheel balancer, and body shop technicians periodically go to the service department to look at the readings on the alignment machine.

The evidence revealed that body shop technicians do not routinely assist with overflow work from the service departments and vice versa. However, there is evidence that during a major flood in 2001, body shop technicians and service department technicians worked on the some cars side-by-side. The record reflects that after the flood of 2001, body shop employees rarely if ever assisted the service departments. While Bock estimated that body shop technicians and service technicians work side-by-side approximately ten percent of the time, Imtiaz Baksh, eight-year employee, team leader and master service technician for the Calvert Toyota Red team, claimed body shop and service technicians rarely if ever assist each other.

The body shop obtains all parts, whether Toyota or Chevrolet, from the Toyota parts department. The Toyota parts department obtains any required Chevrolet parts from the Davis Chevrolet parts department.

Similar to service department service technicians, body shop technicians acquire thousands of dollars worth of tools. While the body shop's tools are similar to the service department tools, many are specialized tools that differ in shape and design from those of service technicians' tools. Like the service technicians, body shop technicians are paid a flat hourly rate. The estimated hourly rate for the body shop technicians is between \$12 to \$14 per flat rate hour while the range for service technicians is \$16 to \$18 dollars per flat hour.

The record revealed that Toyota has several service technician classifications including master, expert, and certified classifications. These classifications are achieved by attending Toyota training schools. No employee in the body shop is classified as master, expert, or certified or has attended the Toyota service training schools. Toyota maintains a collision program that is similar to the service program, but it is only for body shop employees. Body shop technicians also go through training similar to the service ASE training but it is specifically designed for body shop employees.

The Calvert Toyota service technicians, the Davis Chevrolet service technicians and the body shop technicians all enjoy the same health insurance plan, 401(k) retirement plans, vacation leave and holidays. However, the body shop vacation leave and holiday pay were recently standardized to comply with the service technician benefits. Before the change, which occurred in around early August 2002, the exact date unknown, the holiday and vacation leave for the body shop differed from that of the service departments.

Like Calvert Toyota service technicians, body shop technicians wear regular Toyota uniforms in Toyota colors. The body shop technicians have a separate break room and use a separate time clock. However, since the body shop break room does not have snack machines, the technicians occasionally go to the Calvert Toyota service technicians' break room to use the snack machines.

APPROPRIATENESS OF THE PETITIONED FOR SINGLE-UNIT FACILITY

The Petitioner seeks a single-facility unit consisting of the Calvert Toyota service technicians. In contrast, the Employer contends that only a multi-facility unit consisting of the Calvert Toyota, Davis Chevrolet and body shop technicians is appropriate.

It is well established that a single facility unit is presumptively appropriate for collective bargaining. ***Bowie Hall Trucking***, 290 NLRB 41, 42 (1988). The presumption in favor of a single location may be overcome “by a showing of a functional integration so substantial as to negate the separate identity of the single-facility unit.” *Id.* The factors the Board examines in making this determination are “centralized control over daily operations and labor relations, including the extent of local autonomy; similarity of skills, functions, and working conditions; degree of employee interchange; distance between locations; and bargaining history, if any.” ***J & L Plate***, 310 NLRB 429 (1993). The burden is on the party opposing a single-facility unit to present evidence sufficient to overcome the presumption. *Id.*

I find that the functional integration of Calvert Toyota service technicians and Davis Chevrolet service technicians is not so substantial as to negate the separate identity of the single-facility unit. The record revealed that although the service and assistant service managers of Mike Calvert Toyota and Davis Chevrolet report to the same general manager, the day-to-day supervision is separate. The record reflected that Calvert Toyota service technicians are exclusively supervised by a Calvert Toyota Service Manager while the Davis Chevrolet service technicians are exclusively supervised by a Davis Chevrolet Service Manager. The record revealed that there is no interchange of supervisory duties between the two dealerships and each manager exclusively supervises s/his respective facility.

The record revealed that the Toyota service technicians repair only Toyota vehicles and that Chevrolet service technicians repair only Chevrolet vehicles. While the job skills, duties and requisite tools of the Calvert Toyota and Davis Chevrolet service technicians are similar, there has been no interchange of the service technicians between the two dealerships. Further, the record reflected that Toyota and General Motors (Chevrolet), conduct separate service technician training for each dealership and due to differences and manufacturer limitations, Calvert Toyota service technicians and Davis Chevrolet service technicians are not cross-trained.

The record also reflected that Calvert Toyota and Davis Chevrolet service technicians wear different uniforms and work in separate buildings with separate break rooms. While the geographic distance between locations is small, the two facilities are housed on separate lots with different manufacturer names and products.

The lack of common supervision, interchange of service department employees, prior bargaining history, separate work sites, and separate training compel a finding that the functional integration is not so substantial as to negate the separate identity of the single-facility unit. ***Bowie Hall Trucking***, supra. Based on the foregoing, I find a single-unit facility composed of Calvert Toyota service technicians to be appropriate.

The Act does not require a unit to be the most appropriate unit or the only appropriate unit. The Act only requires that the unit be appropriate to ensure to employees the fullest freedom in exercising their rights under the Act. *Morand Bros. Beverage Co.*, 91 NLRB 409 (1950) *enfd* 190 F.2d 576 (7th Cir. 1951). To establish an appropriate unit, the employees involved must share a community of interest and duties. *Swift Co.*, 129 NLRB 1391 (1960). A variety of factors are involved in determining whether employees share a community of interest. The factors include, but are not limited to, the nature of employee skills and functions, common supervision, work situs, interchangeability and contact among employees, wages and benefits, and work conditions. See e.g. *Harron Communications, Inc.*, 308 NLRB 62 (1992); *Boudreaux's Drywall, Inc.*, 308 NLRB 777 (1992).

The record revealed that the service technicians from Calvert Toyota and Davis Chevrolet work on separate vehicles, they have no daily interchange, separate supervision and separate training. In addition, the technicians are housed in separate facilities, have no daily contact and wear separate uniforms. Although Calvert Toyota and Davis Chevrolet have similar skills, share common ownership, common labor relations, some common upper-level management and joint advertisements and sponsorships, these factors do not create such a substantial community of interest to mandate the inclusion of Davis Chevrolet service technicians in the appropriate bargaining unit. Accordingly, I find the Davis Chevrolet service technicians do not share such a substantial community of interest with the Calvert Toyota service technicians so as to mandate their inclusion in the unit found appropriate herein.

SHOP FOREMAN

As I find that the appropriate unit does not include the employees of Davis Chevrolet, I similarly find that the body shop foreman of Davis Chevrolet should not be included in the appropriate unit found herein.

BODY SHOP TECHNICIANS

The Employer contends that the appropriate unit should include the body shop technicians.

I find on balance that the body shop technicians do not possess a sufficient community of interest with the Calvert Toyota service technicians to warrant their inclusion in the unit. The evidence revealed that there is a lack of prior bargaining history between the parties. There is also no common supervision between the body shop employees and the service technicians, no interchange of employees between the two dealerships and the body shop employees and although service technicians and body shop technicians occasionally perform work on the same vehicle, these incidents are not common. Further, the body shop employees perform job tasks with different tools.

The record also reflected that body shop technicians attend training exclusively for body shop technicians and they are not cross-trained with service technicians. Likewise, the record reflected that the body shop technicians are paid on a lower pay scale than service technicians and until recently enjoyed different vacation and holiday benefits than the service technicians.

Finally, while body shop technicians wear uniforms similar to the Calvert Toyota service technicians, they work at a different and separate building with a separate break room and separate time clock.

The lack of prior bargaining history, common supervision, interchange between employees, common work situs, cross training and the use of different work tools between the dealership technicians and the body shop technicians warrant a finding that the body shop technicians and service technicians of Mike Calvert Toyota do not share a substantial community of interest so as to mandate their inclusion in the unit found appropriate herein. *Dodge City of Wauwatosa, Inc.*, 282 NLRB 459 (1986).

CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.

2. The parties stipulated, and I find, that the Employer, Mike Calvert Toyota, Inc., a Texas corporation, is engaged in the retail sale of automobiles in Houston, Texas. During the past twelve months, the Employer received gross revenues in excess of \$500,000 and during that same period, purchased and received goods valued in excess of \$50,000 directly from points located outside the State of Texas. Based on the foregoing, I find the Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this case.

3. The Petitioner claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

INCLUDED: All service technicians including service technician trainees, lube technicians, used car technicians, and pre-delivery inspection technicians employed by Mike Calvert Toyota, Inc. at its 2333 S. Loop 610 West, Houston, Texas facility.

EXCLUDED: All other employees including office clerical employees, professional employees, managerial employees, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by International Association of Machinists and Aerospace Workers, South Texas District, Lodge 37.

The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike that began less than 12 months before the election date and who retained their status as such during the eligibility period, and the replacements of those economic strikers. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, Federal Office Building, Suite 1545, 1919 Smith Street, Houston, TX 77002, on or before September 16_, 2002. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply

with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at 713-209-4890. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Resident Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. ***Club Demonstration Services***, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5:00 p.m., EST on September 23, 2002. The request may **not** be filed by facsimile.

Dated: September 9, 2002

/s/ Curtis A. Wells

Curtis A. Wells, Regional Director
National Labor Relations Board
Region 16
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Classification Index

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